IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Vijay Singh & Anr. Versus State of Rajasthan & ors.

S.B. Criminal Misc. Petition No. 378/2005
against the order dated 23-3-2005 passed
by the Additional Sessions Judge,Anoopgarh,
district Sri Ganganagar, in Criminal Revision
70/2003.

...

Date of Order: September 20, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Vineet Jain, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. N.L. Joshi, for the non-petitioners No.2 and 3.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 23-3-2005 passed by the Additional Sessions Judge, Anoopgarh, district Sri Ganganagar (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 70/2003, whereby the revision petition filed by the non-petitioners No.2 and 3 was allowed and the order dated 25-8-2003 passed by the Judicial Magistrate, Anoopgarh, district Sri Ganganagar (for short, "the trial Court"

hereinafter) was set aside and the matter was remanded to the trial Court for further inquiry keeping in view the observations made in the impugned order.

I have heard learned counsel for the parties. Carefully gone through the order impugned.

It is contended by the learned counsel for the petitioners that the impugned order, to the extent of directing the trial Court to make further inquiry "keeping in view the observations made in the impugned order" is against the provisions of Section 398 of the Code.

Section 398 of the Code reads as under:-

> "398. Power to order inquiry.- On examining any record under Section 297 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged:
>
> Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made."

Having regard to the facts and circumstances of the case, in my view, the impugned order remanding the matter to the trial Court cannot be said to be erroneous. However, the

impugned order, to the extent directing the trial Court to "keep in view the observations made in the impugned order" appears to be beyond the scope of the power of revision of the Sessions Judge and, therefore, to this extent, the impugned order deserves to be set aside.

Consequently, the criminal miscellaneous petition is partly allowed. The impugned order dated 23-3-2005, to the extent of directing the trial Court to keep in view the observations made in the impugned order, is set aside; however, the order impugned remanding the matter to the trial Court for further inquiry is maintained. The stay petition stands dismissed. The record of the trial Court be returned forthwith.

(H.R. PANWAR), J.

mcs